

1782. July 4. Reverend Mr ROBERT ARNOT *against* OLIVER MELVILLE.

MINOR.

A slight act of homologation, occasioned by the influence of a father, and only a few days posterior to minority, not sufficient to bar *restitutio in integrum*.

[*Faculty Collection, IX. 80; Dict. 8998.*]

BRAXFIELD. If a minor does bind himself after majority, he must pay; but we ought to be cautious not to enlarge the obligation. The original obligations were taken from him when he was several years under majority; and, just after his majority, he agreed in signing a state of sums due, but he did not renounce the power of revoking.

MONBODDO. The ratification, in order to be good, must be formal; but this ratification is not.

KAIMES. I do not see that Oliver Melville, when he signed the state after majority, knew that he was at liberty to revoke what he had done during his minority, and so I will not foreclose him.

On the 4th July 1782, "The Lords sustained the reasons of reduction;" adhering to the interlocutor of Lord Westhall.

*Act. Ch. Hay. Alt. Wm. Craig.*

1782. July 5. CRICHTON CLARK *against* GEORGE FREER of Invernethie.

FORUM COMPETENS.

THE defender, a captain in the army, was a native of Scotland, and had a landed estate in Perthshire. His regiment being in England, he obtained leave of absence, and came to Edinburgh on the 15th of August. On the 21st of that month, he was apprehended on a warrant granted by a justice of peace of the county of Edinburgh, proceeding on a petition of the pursuer, who alleged that he was his debtor, and was *in meditatione fugæ*. The defender was liberated on finding caution *de judicio sisti*, "in any action that might be brought against him, *in a competent court*, within six months." In a day or two thereafter, the defender left Edinburgh and went to Perthshire, where he remained till the 8th or 9th of October, and, upon the 17th or 18th of that month, he left Scotland and joined his regiment.

On the 2d of November, an action was raised, before the Sheriff of Edinburgh, by the pursuer against the defender. In defence, he PLEADED,—That he was

not amenable to the Sheriff's jurisdiction. The Sheriff, "in respect of the summary application, and the caution therein found, Finds the same equal to a personal citation to the defender." The cause having been, upon this, brought into the Court of Session by advocacy, the defender—

PLEADED, That, as he had not been 40 days in the county of Edinburgh, he was not amenable to the jurisdiction of the Sheriff: That, although he was a soldier, still his proper domicile was in the county where his lands lay: That, at all events, even supposing that, from his being a soldier, he were answerable to any jurisdiction in which he received a citation, yet here he had received no citation whatever, and it was absurd to hold the proceedings on the *meditatione fugæ* warrant equivalent to a personal citation of the defender before the Sheriff of Edinburgh: That the defender merely found caution to appear in any action that might be brought in a competent court, which could never compel him to appear in a court not competent. *Stewart against Gedd, 16th November 1636, Voet. ad tit. De Jurisdic. No. 20.*

ANSWERED,—The defender, being a soldier, was liable to any jurisdiction in which he might be found, and the circumstance of his having a landed estate in Perthshire makes no distinction in his favour. *Lees, November 1709; Dodds against Westcomb, 11th June 1745.*

The following opinions were delivered:—

HAILES. This cause has been misconducted from the beginning. I doubt much of the power of Justices of Peace to grant warrants of *meditatio fugæ*, as they are called: That, however, is not the question: here caution was found to answer before a judge competent; and the Sheriff of Edinburgh, within whose jurisdiction the defender neither resided nor was found, is supposed to be that judge competent, and all this while the defender points out his real domicile in Perthshire, and shows in what manner the action ought to have been conducted. The pursuer, nevertheless, persists in a wrong course.

PRESIDENT. Caution *judicio sisti* is good to make a man answer, but not before every court: it founds no jurisdiction. Mr Freer had no domicile in Mid-Lothian; neither is he amenable to the court of the Sheriff of that county.

GARDENSTON. Where can a man be cited but where you find him?

PRESIDENT. Good: if you had found him, an action might be brought but before the Court of Session.

On the 5th July 1782, "The Lords remitted to the Ordinary to pass the bill;" altering the interlocutor of Lord Alva.

*Act. Mark Pringle. Alt. G. Ferguson.*

*N.B.*—This, although it only respected the passing of a bill, may be considered as a judgment on the point.